SINGLE BENCH

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO.369 / 2005

Petitioners : 1. Smt.Sadhni Bai
W/o Late Shri Naresh Kumar Madhukar, Aged about 35 years, Caste – Satnami, Occupation – House wife, R/o Village Boriyajhar, P.S. Mahasamund, Post – Khatti, Tahsil & Dist : Mahasamund-(C.G.)

2. Rajendra
S/o Shri Naresh Kumar Madhukar, Aged about 20 years, Caste – Satnami, Occupation – Nil, Village – Boriyajhar, P.S – Mahasamund, Tahsil & Dist : Mahasamund-(C.G.)

3. Rajesh
S/o Late Naresh Kumar Madhukar, Aged about 18 years, Caste – Satnami, Village Boriyajhar, P.S – Mahasamund, Tahsil & Dist : Mahasamund-(C.G.)

4. Ku.Reena
D/o Late Shri Naresh Kumar Madhukar, Aged about 16 years, Occupation – Student Class Xth, Village – Boriyajhar, P.S – Mahasamund, Tahsil & Dist : Mahasamund-(C.G.), Minor, Through its Natural guardian mother Smt.Sadhni Bai.

Versus

Respondents : 1. Chhattisgarh State Electricity Board, Through – Executive Director (Information and Repair) Main Office, Danganiya, Raipur, Tehsil & Dist : Raipur-(C.G.)

2. The Chief Executive Engineer (Information and Repair), C.S.E.B., Mahasamund, Tehsil and Dist : Mahasamund-(C.G.)

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3. The Asst. Engineer,
Ruler Circle, C.S.E.B.,
Mahasamund, Tehsil and Dist :
Mahasamund-(C.G.)

4. Shri Chandrashekar Sinha,
S/o Late Shri Bisesar Sinha,
Caste – Kalar, Village –
Boriyajhar, Tehsil & Dist :
Mahasamund-(C.G.)

5. Shri Santram Sahu,
S/o Pancham Sahu, Aged
about 39 years, Village –
Boriyajhar, P.S.- Mahasamund,
Tehsil & Dist : Mahasamund-
(C.G.)

6. State of Chhattisgarh
Through – Collector
Mahasamund,
Dist : Mahasamund – (C.G.)

WRIT PETITION UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 3691/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

06.10.2005

Shri G.P. Kurre, counsel for the petitioners.

Shri U.S. Chandel, Panel Lawyer for the State.

Heard both the counsel.

The petitioners have preferred this writ petition under Article 227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 13.7.2005 passed by learned District Judge, Raipur in Misc. Civil Suit No.74/04 whereby the application of the petitioner filed for exemption from paying court fees under Section 35 of the Court Fees Act, 1870 has been rejected by the learned District Judge on the ground that the petitioners failed to prove the fact that their annual income is less than Rs.6,000/-.

Having heard learned counsel for the parties, I have perused the impugned order, copy of plaint and the evidence of petitioner Nos. 2 & 3 which was given before the learned District Judge.

Learned District Judge has rejected the prayer of petitioners on the ground that there was agricultural land in the name of deceased Naresh Kumar Madhukar and which has been received by the petitioners as the legal heirs of said deceased. It has further been observed that evidence of petitioner Nos.2 & 3 cannot be believed that they are not working & there is one tractor in their house

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and in para-7 of the plaint it has been written that said deceased used to earn Rs.12,000/- per month from the said tractor, out of which he used to deposit Rs.8,000/- as monthly installment of that tractor and remaining Rs.4,000/- he used to spend on the family.

Having perused the Para-7 of plaint and evidence of petitioner Nos.2 & 3, I am of the opinion that the finding of the trial court is based on the surmises and conjectures and not on any legal evidence. It is true that it has been mentioned in Para-7 of the plaint that there is two acre agricultural land in Village Boriyajhar in the name of the father of the petitioner i.e. Naresh Kumar, who died due to electric shock and it has also been mentioned that annual income from the said agricultural land was Rs.15,000/-. Even if that income is taken as true there are four legal heirs of deceased Naresh Kumar and less than Rs.4,000/- per year comes in the share of each petitioner. As far as the question regarding income from the tractor is concerned, the petitioner Nos.2 & 3 have stated that they are not using the said tractor and there is no other evidence which shows that the petitioner Nos.2 & 3 are plying the said tractor and thereby they are earning any income, moreover, it has come on the record that the tractor in question was purchased by the father of petitioner No.2 to 4 after taking loan from the bank. Therefore, the observation of learned District Judge that it cannot be believed that

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मामला क्रमांक WP 3691/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the petitioner Nos.2 & 3 are not working is based on surmises and conjectures and there is no legal evidence which shows that they are earning any income apart from the agricultural income.

It is admitted position that the petitioners belong to Scheduled Castes community and they have been able to establish that annual income of each of the petitioner on the date of filing of the suit was less than Rs.6,000/-, as such the finding of the learned District Judge is perverse and liable to be set aside.

In the result, the petition is allowed and order impugned passed by the learned District Judge is hereby set aside.

Consequently, M.(W.)P. No.3109/05 & I.A. No. 8503/05 stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Roshan/-